

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:**CITY OF MONDAMIN****Wastewater Facility No. 6-43-49-0-01****ADMINISTRATIVE
CONSENT ORDER****NO. 2013-WW-09**

TO: City of Mondamin
c/o Honorable Mayor and Council
P. O. Box 196
Mondamin, IA 51557

I. SUMMARY

This administrative consent order (order) is entered into between the City of Mondamin (City) and the Iowa Department of Natural Resources (Department). The City hereby agrees to comply with the construction schedule contained in this order for wastewater treatment facility (WWTF) improvements, to properly operate and maintain the existing wastewater collection and treatment facilities, and to pay an administrative penalty of \$3,000.00. In the interest of avoiding litigation, the parties have agreed to the provisions of this order.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Ryan Young
Environmental Specialist
IDNR Field Office No. 4
1401 Sunnyside Lane
Atlantic, IA 50022
Ph: (712) 243-1934

Relating to legal requirements:

Diana Hansen
Attorney at Law
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034
Ph: (515) 281-6267

II. JURISDICTION

The parties hereby agree that this order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I, and the rules promulgated or permits issued pursuant thereto, and Iowa Code section

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455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. The City owns and operates a WWTF facility located in Section 30, T80N, R44W, Harrison County, Iowa. The WWTF is operated under National Pollutant Discharge Elimination System (NPDES) permit number 6-43-49-0-01, issued by this Department on July 1, 2002. This facility consists of a gravity collection system, three lift stations and a three-cell continuous discharge aerated lagoon. The effluent from this facility is discharged to Spooner Ditch which flows to Old Soldier River, pursuant to NPDES permit number 6-43-49-0-01. The NPDES permit contains limitations on influent and effluent flow rates, effluent limits for CBOD5, TSS and pH, monitoring requirements and other terms as set forth in the NPDES permit.

2. The Department issued an NPDES permit to this facility on July 1, 2002. The NPDES permit expired on June 30, 2007. The Department received an application from the City for a new NPDES permit on February 16, 2007. A new NPDES permit can not be issued by the Department for a facility that is not in consistent compliance. The City continues to operate under the terms and conditions of the expired NPDES permit until such time as the City comes into consistent compliance and a new NPDES permit is issued by the Department.

3. Field Office No. 4 (FO 4) conducted an inspection of the City's WWTF on February 11, 2010. The inspection report issued after the inspection indicated that four thirty day average CBOD5 concentration violations and three thirty day average TSS concentration violations occurred between March 2008 and January 2010. The inspection report noted that the WWTF had been in violation of the permit pH limit for every month since April 2007 or for 34 months in a row. The report also noted that the operator had not been calibrating the pH meter prior to taking the samples. Another area of concern in the inspection report was failure to submit timely monthly operation reports (MORs). The report noted that the City had failed to submit five MORs timely within the inspection review period of March 2008 through January 2010.

4. On October 22, 2012, Field Office No. 4 staff conducted a compliance review of the City's MOR data to determine if the City was in compliance with the City's NPDES permit. The review indicated that the City had violations of the CBOD5 thirty day average permit limit in five of six months in 2012. These violations occurred in February 2012, March 2012, April 2012, May 2012, and July 2012. The City also had violations of the CBOD5 monthly average greater than 1.4 times the NPDES permit limits in February and April 2012. Based on the compliance review it was determined that the City was not in compliance with its NPDES permit.

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IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged pursuant to a permit. Iowa Code section 455B.183 prohibits the operation of a wastewater disposal system without a permit from the Department.

2. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission (Commission) to promulgate rules relating to the operation of waste disposal systems, including rules relating to monitoring and reporting requirements. The Commission has done so at 567 IAC chapters 60- 64. Subrule 64.3(1) prohibits the operation of a waste disposal system without or contrary to the terms of an operation permit. Subrule 64.7 specifies the conditions that are to be included in a permit, including applicable effluent limitations in chapters 61 and 62 of the rules.

3. This facility's NPDES permit requires this facility to be adequately operated and maintained. Standard Condition 8 of the permit provides that all facilities and control systems shall be operated as efficiently as possible and maintained in good working order. This standard permit condition is based upon subrule 64.7(5)"f". This subrule states "the permittee at all times shall maintain in good working order and operate as efficiently as possible any facilities or systems of control to achieve compliance with the terms and conditions of the permit."

4. Department rule 567 IAC 63.7 provides for the submission of records of operation for WWTFs to the Department. This rule provides as follows:

567—63.7 (455B) Submission of records of operation. Except as provided in subrules 63.3(4) and 63.5(1), records of operation shall be submitted to the appropriate regional field office of the department within 15 days following the close of the reporting period specified in 63.8(455B) and in accordance with monitoring requirements derived from this chapter and incorporated in the operation permit. The permittee shall report all instances of noncompliance not reported under 63.12(455B) at the time monitoring reports are submitted. If a permittee becomes aware that it failed to submit any relevant facts in any report to the director, the permittee shall promptly submit such facts or information.

Under this rule MORs are required to be submitted to the Department within fifteen days following the close of the reporting period and in accordance with monitoring requirements derived from chapter 63 and included in the operation permit for the facility. Rule 63.9 requires MORs to include the results of all monitoring specified in or authorized by chapter 63. The February 11, 2010 inspection of the City's WWTF established violations of the monitoring and reporting requirements for this WWTF in

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regards to submittals of MORs to FO 4. The violations have been outlined in this order in Section III. Statement of Facts.

5. The City's has not complied with its NPDES permit effluent limits for CBOD5 and TSS as stated in this order. Such NPDES permit violations are in violation of Department subrule 64.3(1) since they demonstrate that the WWTF is being operated contrary to the terms of the City's NPDES permit.

V. ORDER

THEREFORE, the Department orders and the City agrees to comply with the following provisions in order to cease, abate, and redress the above-cited violations:

1. WWTF improvements are required to be completed in accordance with the following schedule.

A. Within 60 days of receipt of this order, the City is required to obtain the services of a professional engineer to prepare a facility plan for sewer system and or wastewater treatment facility improvements.

B. Within 120 days of receipt of this order complete a Self-Assessment Matrix and submit a Work Record Request form to the Department's Wastewater Engineering Section. The forms and instructions for the matrix and work request are available at: <http://www.iowadnr.gov/InsideDNR/RegulatoryWater/WastewaterConstruction.aspx>. If there are questions concerning the forms, such questions should be directed to either Terry Kirschenman at 515/281-8885 or Emy Liu at 515/281-8509.

C. Within 180 days of receipt of this order, the City shall submit a facility plan for the construction of sewer system and/or treatment facility improvements to the Department's Wastewater Engineering Section. The facility plan must address sewer system and WWTF improvements necessary for the facility to maintain compliance with the effluent limits in the NPDES permit. The facility plan is required to be completed in accordance with Chapter 11.2 of the Iowa Wastewater Facilities Design Standards, as adopted on April 25, 1979.

D. The facility plan shall include a schedule for completion of each of the following events:

- Submission of plans and specifications with an application for a construction permit.
- Beginning of construction.
- Completion of construction.

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- Compliance with NPDES permit limits and conditions.

If the construction of improvements will be a phased project, a schedule for the beginning and completion of each phase shall be included in the facility plan.

E. The City is required to comply with the construction schedule in the approved facility plan in order to achieve compliance with the City's NPDES permit.

2. The City agrees to properly operate and maintain the existing WWTF in accordance with its existing or any future NPDES permit.

3. The City agrees to comply with its existing or any future NPDES permit, including compliance with all reporting and monitoring requirements.

4. The City agrees to the payment of an administrative penalty in the amount of \$3,000.00. Payment is due to the Department within thirty days of receipt of this order signed by both parties.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in Chapter 567 IAC chapter 10. Pursuant to these rules the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with an administrative penalty.

a. **Economic Benefit** There has been a history of NPDES permit effluent limit violations for CBOD5 and TSS by the City. There has been an economic benefit to the City in not upgrading the WWTF previously to preclude NPDES permit effluent limit violations for CBOD5 and TSS. The City may now need to spend a significant amount to upgrade its WWTF to meet NPDES permit effluent limits. The amount of \$1,000.00 is assessed for economic benefit.

b. **Gravity of the violations** One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above substantial civil and criminal sanctions are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Maintaining compliance with water pollution control laws is a major program priority of the federal and state pollution control agencies.

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This facility discharges into Spooner Ditch, which then discharges to Old Soldier River. Continued violations of the permit limits could acutely impact the aquatic and shoreline ecosystems as well as pose a chronic threat to both public health and the environment. Based on these considerations, the amount of \$1,000.00 is assessed for this factor.


c. Culpability. The City has been made aware of its responsibility to comply with Department rules and its NPDES permit through inspections, site visits and reports of the inspections and visits. The amount of \$1,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

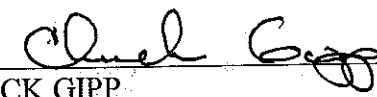
Iowa Code section 455B.175, and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent of the City. By signature to this order, all rights to appeal this order are waived.

VIII. NONCOMPLIANCE

Compliance with Paragraph V. of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order. Failure to comply with this order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.


KAREN BREYFOGLE, MAYOR
CITY OF MONDAMIN

Dated this 20 day of
March, 2013


CHUCK GIPP
DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 20th day of
April, 2013

City of Mondamin- Wastewater Facility No. 6-43-49-0-01 (Copy to Central Office Wastewater Records File); Ryan Young- Field Office No. 4; Adam Schneiders- NPDES Permits; Diana Hansen- Legal Services Bureau; I.B.2.b., I.B.2.c, I.B.2.d.